

JUDGE CROTTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILE COPY

THE MUDTRUCK LLC,

Plaintiff,

v.

UNDERGROUND BEVERAGE BRANDS,
LLC, MATTHEW A. MARINI

Defendants.

CIV. ACTION NO.:

COMPLAINT AND
DEMAND FOR JURY TRIAL

'08 CIV 7208

Plaintiff The Mudtruck LLC ("Plaintiff"), by its attorneys, for its Complaint against defendants, Underground Beverage Brands and Matthew A. Marini ("Defendants"), alleges as follows:

NATURE OF THE ACTION

1. This is an action for trademark infringement, unfair competition, false designation of origin, false advertising, and related claims under the United States Trademark (Lanham) Act of 1946, 15 U.S.C. §§ 1051 et seq. (as amended), and New York statutory and common law, as well as copyright infringement in violation of the Copyright Act, 17 U.S.C. §§ 501, et. seq. The Complaint arises from Defendants' unauthorized adoption and use of designations and designs which are indistinguishable from Plaintiff's name and trademark, MUD and MUD & Design ("Plaintiff's MUD Marks") and copyright for the MUDSPOT logo ("MUDSPOT Design"). Defendants' collective use of imitations of Plaintiff's MUD Marks and MUDSPOT Design will inevitably confuse, mislead and deceive the general public into believing that Plaintiff manufactures, sells, sponsors, approves or licenses Defendants' coffee-related products and services. On information and belief, Defendants adopted and used Plaintiff's MUD Marks and MUDSPOT Design willfully, in order foster such confusion and thereby induce consumers to

purchase Defendants' products as and for Plaintiff's products, all to Defendants' own financial gain.

THE PARTIES

2. Plaintiff, The Mudtruck LLC, is a limited liability company, organized and existing under the laws of New York, located and doing business at 307 East 9th Street, Suite GRN, New York, New York 10003. Since 2000, Plaintiff is engaged in the business of producing or causing to be produced, distributing, selling and/or offering for sale, *inter alia*, its own blend of coffee and coffee drinks out of two step-van locations in New York City. Further, Plaintiff opened two restaurant locations in New York City called "MUDSPOT" in 2003. Plaintiff markets, advertises, promotes and offers for sale and sells its coffee beverages, coffee beans and other related products in New York City and throughout the United States and worldwide via the Internet and email.

3. On information and belief, defendant, Underground Beverage Brands, LLC (hereinafter "UBB") is a limited liability company, organized and existing under the laws of Delaware, located and doing business at 800 N. Rembrandt Avenue, Royal Oak, Michigan 48067. On information and belief, defendant, UBB, which was established in 2007, produces or causes to be produced ready-to-drink coffee and markets, advertises, promotes, distributes, offers for sale and/or sells, *inter alia*, such coffee products throughout the northeast, southeast, and midwest United States through retail stores and via the Internet.

4. On information and belief, defendant Matthew A. Marini (hereinafter "Marini") an individual, is the owner of UBB, and also has a business address of 800 N. Rembrandt Avenue, Royal Oak, Michigan 48067.

JURISDICTION AND VENUE

5. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1332 and 1338(a) and (b); and 15 U.S.C. §§ 1116, 1121 and 1125(a). This Court has supplemental jurisdiction over Plaintiff's claims under the laws of the State of New York pursuant to 28 U.S.C. § 1367.

6. On information and belief, this Court has personal jurisdiction over Defendants in that Defendants conduct business throughout the State of New York, including this District.

7. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(a) in that Defendants are transacting business within this District. Further, venue is appropriate since a substantial portion of the acts complained of herein was committed by Defendants within this District.

PLAINTIFF'S TRADEMARK RIGHTS

8. Plaintiff, The Mudtruck LLC, which was started in 2000 by Greg Northrop and Nina Berott, is known for selling its own blends of coffee called "MUD" out of converted step-vans called the "Mudtruck." Plaintiff has two step-van locations in New York City - the first located at Astor Place in the East Village and the second located at Christopher Park in the West Village. In addition, Plaintiff has extended its business by establishing a restaurant called "Mudspot" as well as by opening a coffee and espresso bar located inside the flagship store of a bath and body company, Kiehl's, in 2003, and distributing coffee products to retail stores throughout the United States.

9. Plaintiff promotes, markets, distributes, offers for sale and sells its coffee products and related goods and services under the trademarks MUD, MUD & Design, and MUDTRUCK, and other marks that incorporate the literal element MUD, including but not limited to, MUD, MUD & Design, MUDTRUCK, MUDSPOT, MUDMUSIC and MUDSHOP, from its step-van

and retail locations as well as on the Internet on its websites at “themudtruck.com,” “mudcoffee.com,” and “mudnyc.com” since at least as early as 2000.

10. Plaintiff is the owner of the entire right, title and interest in and to United States Trademark Registration No. 2,892,090 for the mark, MUD & Design, covering “coffee,” which was registered on the Supplemental Register on October 5, 2004. Such registration is currently valid, subsisting and in full force and effect. A copy of the United States Patent and Trademark Office (“USPTO”) database printout evidencing Plaintiff’s registration for MUD & Design is attached hereto as Exhibit A and set forth below:



11. At least as early as March 6, 2001, Plaintiff created, adopted and commenced use of the trademark, MUD& Design, to identify and distinguish its coffee and related products. Plaintiff has made continuous and exclusive use of the mark, MUD & Design, from its date of first use to the present and no entities other than Plaintiff is authorized to provide coffee and related products or services to others in the United States under, or in connection with, the mark MUD & Design.

12. As a result of substantial time, effort and money invested in its business, Plaintiff has achieved a reputation for excellence in the production and sale of its coffee and coffee related products and in the rendering of its services. In fact, Plaintiff’s brand of coffee bearing the MUD Mark and Logo has been voted best cup of coffee in New York by *Time Out New York* and *Village Voice*, and has been featured in numerous local, national and international newspapers and publications such as *Time Magazine*, *Fortune Small Business*, *The New York*

Times, *New York Post*, *New York Magazine*, and *The Onion*, as well as on television, namely, on CNN, The Food Network and *The Oprah Winfrey Show*. Further, Plaintiff's MUD coffee retail products, namely, coffee beans and ground packaged 14 oz. retail bags, are distributed through leading food retailers such as Whole Foods Market, Inc. as well as nationwide and internationally through Plaintiff's websites.

13. As a result of its widespread recognition and reputation for excellence, Plaintiff enjoys a substantial demand for and consumer sales of its coffee products. Together with its reputation for excellence, Plaintiff enjoys valuable goodwill in its trademark which is used in its advertising and on its products.

PLAINTIFF'S COPYRIGHTED DESIGN

14. Nina Berott, one of Plaintiff's owners, is the owner of the entire right, title and interest in and to United States Copyright Registration No. VA126-0747 for the MUDSPOT logo, registered on May 19, 2004 ("MUDSPOT Design"). The MUDSPOT Design has been used in connection with MUDspot coffee shop/restaurant since its opening on September 14, 2003. A true and correct copy of the Certificate of Registration for U.S. Copyright Registration No. VA126-0747 is attached hereto as Exhibit B. The image of the MUDSPOT Design is set forth below:



Defendants' Wrongful Actions

15. On information and belief, subsequent to Plaintiff's adoption and use of MUD & Design as described above, Marini adopted and commenced use in the United States, the design mark MUD & Design, on and in connection with Defendant's ready to drink coffee beverages.

16. On or about April 27, 2005, well after Plaintiff first adopted and used Plaintiff's MUD Mark in commerce, and subsequent to the federal registration thereof, Marini filed an intent-to-use Application Serial No. 78/604,264 in the USPTO for registration of the mark MUD & Design.

17. On or about March 11, 2008, the USPTO issued a Certificate of Registration No. 3,395,872 for MUD & Design for use in connection with "ready to drink coffee beverages" in Class 30 with an alleged first use date in commerce of September 24, 2007, approximately three years after Plaintiff obtained its federal registration for Plaintiff's MUD Mark. A copy of the USPTO database printout showing Marini's registration for MUD & Design is attached hereto as Exhibit B and set forth below:



18. On information and belief, Marini has knowingly made the false and fraudulent statement to the USPTO that no other party had the right to use the term in order to procure a federal registration granting it nationwide trademark rights.

19. On or about February 12, 2008, UBB filed an intent-to-use trademark Application Serial No. 77/395,121 for the mark MUUD & Design covering "hoods; jerseys; tops" in International Class 25, "beverages made of coffee; coffee; coffee; coffee based beverages; coffee

beans; coffee beverages with milk; coffee-based beverage containing milk; coffee-based beverages; ground coffee beans; prepared coffee and coffee-based beverages; roasted coffee beans" in International Class 30, "coffee-based liqueurs" in International Class 33 and "coffee shops; Coffee-house and snack-bar services" in International Class 43. A copy of the USPTO database printout showing UBB's application for MUUD & Design is attached hereto as Exhibit C and set forth below:



20. On information and belief, subsequent to Plaintiff's adoption and use of Plaintiff's MUD Mark, as described above, Marini and Defendant, UBB, adopted and used the virtually identical MUD & Design and MUUD & Design marks (collectively "Infringing Marks") on and in connection with Defendants' ready-to-drink coffee beverages and related products ("Infringing Products"), and marketed those goods on the Internet. A specimen showing Defendants' use of the Infringing Marks is attached hereto as Exhibit D.

Plaintiff's Repeated Protests to Defendants

21. Plaintiff became aware of Defendants' use of the virtually identical MUD & Design mark in early December 2007. In an effort to stop Defendants' blatant acts of trademark and copyright infringement, Plaintiff sent a cease and desist letter addressed to Defendants on December 14, 2007. Plaintiff thereby advised Defendants of Plaintiff's rights in Plaintiff's MUD Marks and demanded that Defendants cease use of its virtually identical and infringing mark.

22. On December 19, 2007, Plaintiff sent another letter to Defendants advising them that it discovered further facts about the Defendants, including the following: (i) that Defendants

were doing business as "Mud Coffee Co."; (ii) that Defendants' logo was virtually identical to the Plaintiff's MUD & Design mark and MUDSPOT Design; and (iii) that Defendants were using terms such as "MudMusic" and "MudShop" on their website at www.drinkmud.com, which terms Plaintiff has been using on its websites since 2000. Plaintiff again requested that Defendants change the name and logo design of their products, abandon Registration No. 3,395,872 for MUD & Design, and remove all websites from the Internet in connection with any "Mud"-related products Defendants were offering for sale.

23. Through an exchange of several emails on December 19, 2007, Defendants' representative, Sean P. Pierce (hereinafter "Pierce"), represented to Plaintiff that Plaintiff does indeed own rights to the term MUD, that Defendants will change their name and that they will never use the term and logo "MUDSPOTS" again. Further, Mr. Pierce indicated that UBB is coming to "NYC next month in a very large way, no matter what happens with this situation" and that Plaintiff and UBB should work together. Copies of emails on December 19, 2007 between the parties is attached hereto as Exhibit D.

24. On January 31, 2008, Plaintiff received an email from Pierce, in which he requested to license Plaintiff's logo for his new organic line of products. On February 4, 2008, Pierce sent an email to Plaintiff to seek a final decision regarding a possible license, to which Plaintiff did not agree.

25. Subsequently, on or about February 12, 2008, UBB filed an intent-to-use trademark Application Serial No. 77/395,121 for the mark MUUD & Design, as described above.

FIRST CLAIM FOR RELIEF
(Federal Trademark Infringement under 15 U.S.C. § 1114)

26. Plaintiff re-alleges and incorporates herein by reference the allegations set forth in the proceeding paragraphs of this Complaint.

27. Plaintiff's MUD Marks and the goodwill of the businesses associated with them in the United States are of great and significant value, are highly distinctive and arbitrary, and have become universally associated in the public mind with the products and services of the very highest quality and reputation finding their source in Plaintiff.

28. Without Plaintiff's authorization or consent, and having knowledge of Plaintiff's well-known and prior rights in Plaintiff's MUD Marks, and the fact that Defendants' goods bear marks which are virtually identical and/or confusingly similar to Plaintiff's MUD Marks, Defendants have distributed, advertised, offered for sale and/or sold the Infringing Products to the consuming public in direct competition with Plaintiff, in or affecting interstate commerce.

29. Defendants' use of marks which infringe upon Plaintiff's MUD Marks is likely to cause and is causing confusion, mistake and deception among the general purchasing public as to the origin of Defendants' Infringing Products, and is likely to deceive the public into believing that the Infringing Products sold by Defendants originate from, are associated with or are otherwise authorized by Plaintiff, all to the damage and detriment of Plaintiff's reputation, goodwill and sales.

30. Defendants' unauthorized use of Plaintiff's MUD Marks on or in connection with the Infringing Products was done with notice and full knowledge that such use was not authorized or licensed by Plaintiff. Defendants' actions constitute willful infringement of Plaintiff's exclusive rights in Plaintiff's MUD Marks in violation of 15 U.S.C. § 1114.

31. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered damage to its valuable Plaintiff's MUD Marks, and other damages in an amount to be proved at trial.

32. Plaintiff has no adequate remedy at law. If Defendants' activities are not enjoined, Plaintiff will continue to suffer irreparable harm and injury to their goodwill and reputation.

SECOND CLAIM FOR RELIEF
(Copyright Infringement under 17 U.S.C. §§ 501, et. seq.)

33. Plaintiff re-alleges and incorporates by reference the allegations set forth in the proceeding paragraphs of this Complaint.

34. Plaintiff is the owner of all right, title and interest in and to the copyright of the MUDSPOT Design.

35. Plaintiff has never authorized, licensed or otherwise permitted Defendants to manufacture, distribute, sell or otherwise make any use of the MUDSPOT Design or any copies thereof.

36. Defendants have copied, distributed and displayed the MUDSPOT Design by manufacturing and/or arranging for manufacture of products, advertising, distribution materials, offering for sale and selling products, which bear print designs identical or nearly identical to the MUDSPOT Design.

37. Defendants' acts violate Plaintiff's exclusive rights in Plaintiff's MUDSPOT Design under Section 106 of the Copyright Act of 1976, 17 U.S.C. § 106, and constitute willful infringement of the MUDSPOT Design.

38. As a direct and proximate result of Defendants' unauthorized use of the MUDSPOT Design, Plaintiff has suffered damages to its valuable copyrighted MUDSPOT Design, and other damages in an amount to be proved at trial.

39. Defendants have realized unjust profits, gains and advantages as a proximate result of their infringement.

40. Plaintiff does not have an adequate remedy at law, and will continue to be damaged by Defendants' copyright infringement unless this Court enjoins Defendants from such infringing practices.

THIRD CLAIM FOR RELIEF

(Unfair Competition and False Designation of Origin under 15. U.S.C. § 1125(a))

41. Plaintiff re-alleges and incorporates by reference the allegations set forth in the proceeding paragraphs of this Complaint.

42. Infringing Products are of the same general nature and type as Plaintiff's goods, and as such, Defendants' sale of Infringing Products is likely to cause confusion to the general purchasing public.

43. Defendants' unauthorized use of Plaintiff's MUD Marks and the MUD Design or similar variation thereof, on or in connection with Infringing Products was done with notice and full knowledge that such use was not authorized or licensed by Plaintiff. Defendants have used and continue to willfully use Plaintiff's MUD Marks and the MUD Design with the intent to confuse, mislead, or deceive customers, purchasers, and members of the general public as to the origin, source, sponsorship, or affiliation of the Infringing Products, and with the intent to trade on Plaintiff's reputation and goodwill.

44. Defendants' unlawful, unauthorized and unlicensed manufacturing, advertising, distributing, offering for sale and/or selling of Infringing Products creates express and implied misrepresentations that Infringing Products were created, authorized or approved by Plaintiff, all to Defendants' profit and Plaintiff's great damage and injury.

45. Defendants' aforesaid acts are in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), in that Defendants' use of marks and designs which infringe upon Plaintiff's MUD Marks and the MUD Design, in connection with Defendants' goods and services, in interstate commerce constitutes false designation of origin and unfair competition.

46. Defendants' unauthorized use of the Plaintiff's MUD Marks and the MUD Design on or in connection with their Infringing Products was done with notice and full knowledge that such use was not authorized or licensed by Plaintiff. The Defendants have used and continue to

willfully use Plaintiff's MUD Marks and the MUD Design with the intent to confuse, mislead, or deceive customers, purchasers, and members of the general public as to the origin, source, sponsorship, or affiliation of the Infringing Products, and with the intent to trade on Plaintiff's reputation and goodwill.

47. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered damage to its valuable Plaintiff's MUD Marks, and other damages in an amount to be proved at trial.

48. Plaintiff has no adequate remedy at law. If Defendants' activities are not enjoined, Plaintiff will continue to suffer irreparable harm and injury to their goodwill and reputation.

FOURTH CLAIM FOR RELIEF
(Common Law Trademark Infringement)

49. Plaintiff re-alleges and incorporates by reference the allegations set forth in the proceeding paragraphs of this Complaint.

50. As a result of Plaintiff's hard work in producing and providing coffee products under Plaintiff's MUD Marks, Plaintiff has built-up valuable good will in Plaintiff's MUD Marks. As such, Plaintiff's MUD Marks have become associated with Plaintiff's products, and have come to symbolize the reputation for quality and excellence of Plaintiff's products.

51. With full knowledge of Plaintiff's property rights in Plaintiff's MUD Marks, and without Plaintiff's consent or knowledge, Defendants have advertised, promoted, produced, marketed and sold goods bearing and under marks virtually identical to, and in overall appearance, confusingly similar to, Plaintiff's MUD Marks.

52. Defendants have deliberately and willfully copied Plaintiff's MUD Marks for use in commerce without any authorization or commercial necessity, legitimate reason or satisfactory explanation, and have derived unlawful gains, profits and advantages from its infringement.

53. Defendants' infringing use as described above as impaired, is impairing and, unless enjoined by this Court, will continue to impair Plaintiff's reputation accrued under Plaintiff's MUD Marks and has caused, is causing and will continue to cause injury and damage to Plaintiff, which is presently indeterminate, but for which Plaintiff is entitled to relief under the common law of the state of New York.

54. Plaintiff has no adequate remedy at law. If Defendants' activities are not enjoined, Plaintiff will continue to suffer irreparable harm and injury to its goodwill and reputation.

FIFTH CLAIM FOR RELIEF
(Common Law Unfair Competition)

55. Plaintiff re-alleges and incorporates by reference the allegations set forth in the proceeding paragraphs of this Complaint.

56. As a result of Plaintiff's hard work in producing and providing Plaintiff's products, Plaintiff has built-up valuable good will in Plaintiff's products. As such, Plaintiff's products have become associated with Plaintiff's products, and have come to symbolize the reputation for quality and excellence of Plaintiff's products.

57. Defendants' wrongful use of colorable imitations of Plaintiff's MUD Marks as alleged herein is likely to deceive the public into believing falsely that Defendants' goods are associated therewith, originate from or are sold, sponsored or approved by Plaintiff, or that there is otherwise a connection between the two companies' goods and businesses. Defendants have unfairly competed with Plaintiff in violation of New York common law.

58. On information and belief, such actions were taken by Defendants in a deliberate attempt to misappropriate and trade off of the goodwill and valuable reputation of Plaintiff and Plaintiff's MUD Marks. Such action constitutes a willful attempt by Defendants to usurp the goodwill in Plaintiff's MUD Marks, and constitutes unfair competition in violation of New York common law.

59. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered damage to its valuable Plaintiff's MUD Marks, and other damages in an amount to be proved at trial.

60. Plaintiff does not have an adequate remedy at law, and will continue to be damaged by Defendants' sale of Infringing Products unless this Court enjoins Defendants from such deceptive business practices.

SIXTH CLAIM FOR RELIEF
(New York General Business Law § 360(l))

61. Plaintiff re-alleges and incorporates by reference the allegations set forth in the proceeding paragraphs of this Complaint.

62. Defendants' illegal acts as set forth above have caused damage to Plaintiff by tarnishing Plaintiff's valuable reputation and diluting or blurring the distinctiveness of Plaintiff's MUD Marks and the MUD Design in violation of New York General Business Law § 360(l).

63. Plaintiff does not have an adequate remedy at law, and will continue to be damaged by Defendants' sale of Infringing Products unless this Court enjoins Defendants from such deceptive business practices.

SEVENTH CLAIM FOR RELIEF
(New York General Business Law § 349)

64. Plaintiff re-alleges and incorporates by reference the allegations set forth in the proceeding paragraphs of this Complaint.

65. Defendants, without Plaintiff's authorization or consent, and having knowledge of Plaintiff's prior rights in Plaintiff's MUD Marks, have distributed, advertised, offered for sale and/or sold Infringing Products employing Plaintiff's MUD Marks to the consuming public in violation of New York General Business Law § 349.

66. Defendants' use of Plaintiff's MUD Marks and the MUD Design is likely to cause and is causing confusion, mistake and deception among the general purchasing public as to the origin of Defendants' Infringing Products, and is likely to deceive the public into believing that the Infringing Products sold by Defendants originate from, are associated with or are otherwise authorized by Plaintiff, all to the damage and detriment of Plaintiff's reputation, goodwill and sales.

67. Defendants' deceptive acts and practices involve public sales activities of a recurring nature.

68. Plaintiff does not have an adequate remedy at law, and will continue to be damaged by Defendants' sale of Infringing Products unless this Court enjoins Defendants from such fraudulent business practices.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. That Defendants, their officers, agents, servants, employees, attorneys, confederates, and all persons acting for, with, by, through or under them be preliminarily enjoined and restrained, at first during the pendency of this action and, thereafter, permanently:
 - a) from using in any manner Plaintiff's MUD Marks, alone or in combination with any word or words which so resemble each said trademark as to be likely to cause confusion, deception, or mistake on or in connection with the advertising, offering for sale, or sale of any product not Plaintiff's, or not authorized by Plaintiff to be sold in connection with each of Plaintiff's MUD Marks;
 - b) from directly or indirectly infringing Plaintiff's MUDSPOT Design in any manner, including, but not limited to, reproducing, adapting, and/or displaying Plaintiff's MUDSPOT Design by distributing, advertising, selling, and/or offering for sale, or causing

others to do so, any product, including without limitation, products bearing designs substantially similar to Plaintiff's MUDSPOT Design;

c) from committing any acts that cause to cause purchasers to believe that Defendants' products are those sold under the control and supervision of Plaintiff, or sponsored or approved by, or connected with, or guaranteed by, or produced under the control and supervision of Plaintiff;

e) from further infringing Plaintiff's MUD Marks and damaging Plaintiff's goodwill;

f) from shipping, delivering, distributing, returning or otherwise disposing of, in any manner, products or inventory not manufactured by or for Plaintiff, nor authorized by Plaintiff to be sold or offered for sale, and which bear any of the Plaintiff's MUD Marks or MUDSPOT Design

g) from otherwise competing unfairly with Plaintiff or any of their authorized licensees in any manner; and

h) from assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in the above subparagraphs (a) through (g).

2. That, based on paragraphs 15-18 above, this Court declare that Defendant, Matthew A. Marini is not entitled to the continued ownership of Registration No. 3,395,872;

3. That, based on paragraphs 15-18 above, this Court order Defendant, Matthew A. Marini, to file a voluntary surrender of Registration No. 3,395,872;

4. That this Court declare that Defendant, Underground Beverage Brands, LLC is not entitled to registration on its Application Serial No. 77/395,121 with respect to goods and services covered under International Classes 30, 33 and 43;

5. That this Court order Defendant, Underground Beverage Brands, LLC, to file an express abandonment of Application Serial No. 77/395,121 with respect to goods and services covered under International Classes 30, 33 and 43;

6. That Defendants, within thirty (30) days after service of judgment with notice of entry thereof upon it, be required to file with the Court and serve upon Plaintiff a written report under oath setting forth in detail the manner in which Defendants have complied with the injunction;

7. That Defendants account for and pay over to Plaintiff all profits realized by Defendants by reason of Defendants' unlawful acts herein alleged and that the amount of disgorgement for infringement of Plaintiff's registered trademarks and copyright be increased by a sum not exceeding three times the amount thereof as provided by law and that the Court impose whatever temporary, preliminary and final equitable relief is necessary to achieve the foregoing, including but not limited to, the imposition of a constructive trust;

8. That Plaintiff be awarded actual damages in an amount to be determined at trial and that the amount of damages for infringement of Plaintiff's registered trademarks and copyright be increased by a sum not exceeding three times the amount thereof as provided by law;

9. If elected by Plaintiff, for the maximum statutory damages as permitted under the Copyright Act;

10. For such other amounts as may be proper under 17 U.S.C. § 504;

11. That Plaintiff be awarded reasonable attorneys' fees and costs; and

12. That Plaintiff have such other and further relief as the Court may deem equitable including, but not limited to, any relief set forth under Sections 34-39 of the 1946 Trademark Act,

Copyright Act and/or state statutory law, including, exemplary damages under New York law for Defendants' willful and intentional acts.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demand a jury trial on all triable issues that are raised by this Complaint.

Dated: August 12, 2008

Respectfully submitted,

GREENBERG TRAURIG LLP

By:



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*Attorneys for Plaintiff
The Mudtruck LLC*

EXHIBIT A

Int. Cl.: 30

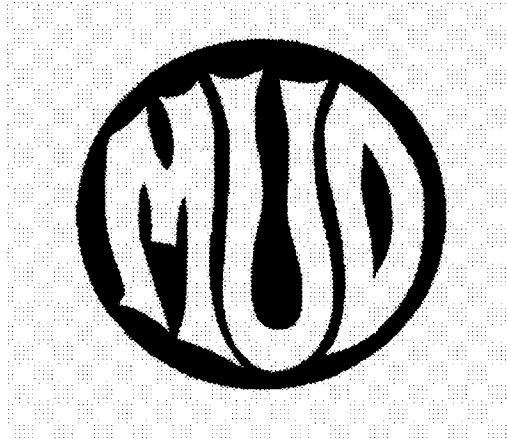
Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 2,892,090

Registered Oct. 5, 2004

**TRADEMARK
SUPPLEMENTAL REGISTER**



THE MUDTRUCK LLC (NEW YORK CORPORATION)
228 EAST 6TH STREET, #3
NEW YORK, NY 10003

OWNER OF U.S. REG. NO. 2,573,890.

SER. NO. 78-265,714, FILED P.R. 6-23-2003; AM. S.R.
7-12-2004.

FOR: COFFEE, IN CLASS 30 (U.S. CL. 46).

FIRST USE 3-6-2001; IN COMMERCE 3-6-2001.

ELIZABETH J. WINTER, EXAMINING ATTORNEY

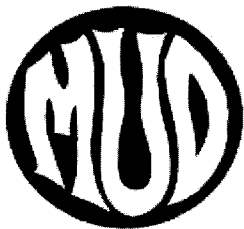
Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2008-08-07 14:05:34 ET

Serial Number: 78265714 Assignment Information Trademark Document Retrieval

Registration Number: 2892090

Mark



(words only): MUD

Standard Character claim: No

Current Status: Registered.

Date of Status: 2004-10-05

Filing Date: 2003-06-23

Transformed into a National Application: No

Registration Date: 2004-10-05

Register: Supplemental

Law Office Assigned: LAW OFFICE 113

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 830 -Post Registration

Date In Location: 2006-10-13

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. THE MUDTRUCK LLC

Address:

THE MUDTRUCK LLC

228 East 6th Street, #3

New York, NY 10003

United States

Legal Entity Type: Corporation

State or Country of Incorporation: New York

Phone Number: 212-529-8766

GOODS AND/OR SERVICES

International Class: 030

Class Status: Active

COFFEE

Basis: 1(a)

First Use Date: 2001-03-06

First Use in Commerce Date: 2001-03-06

ADDITIONAL INFORMATION

Design Search Code(s):

26.01.11 - Circles comprised of animals; Circles comprised of geometric figures; Circles comprised of humans; Circles comprised of letters or numerals; Circles comprised of plants; Circles comprised of punctuation; Letters, numerals, punctuation, geometric figures, objects, humans, plants or animals comprising a circle

26.01.21 - Circles that are totally or partially shaded.

Prior Registration Number(s):

2573890

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2006-10-13 - Review Of Correspondence Complete

2006-01-04 - PAPER RECEIVED

2004-10-05 - Registered - Supplemental Register

2004-08-10 - Law Office Publication Review Completed

2004-07-30 - Assigned To LIE

2004-07-26 - APPROVED FOR REGISTRATION SUPPLEMENTAL REGISTER

2004-07-12 - Amendment From Applicant Entered

2004-07-12 - Communication received from applicant

2004-07-12 - PAPER RECEIVED

2004-01-08 - Non-final action e-mailed

2004-01-07 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

BRUCE H. SALES

Correspondent

BRUCE H. SALES

LERNER, DAVID, LITTENBERG, ET AL.

600 SOUTH AVENUE WEST

WESTFIELD, NJ 07090

Phone Number: 908-654-5000

Fax Number: 908-654-7866

EXHIBIT B

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America



Form VA
For a Work of the Visual Arts

VA 1-280-747



EFFECTIVE DATE OF REGISTRATION

MAY 19, 2004

Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEEDED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1 Title of This Work **MUD SPOT LOGO** NATURE OF THIS WORK **Drawing**

Previous or Alternative Titles

Publication as a Contribution If the work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work

If published in a periodical or serial give Volume Number Issue Date On Pages

2 NAME OF AUTHOR **NINA BEROTT** DATES OF BIRTH AND DEATH
Year Born **1974** Year Died

NOTE Under the law, the "author" of a "work made for hire" is generally the employer not the employee (see instructions). For any part of this work that was "made for hire" in the space provided give the employer (or other person for whom the work was prepared) as "author" of that part and leave the space for dates of birth and death blank.

Was this contribution to the work a "work made for hire"? ☐ Yes ☒ No

Author's Nationality or Domestic Name of Country **OR** Claim of **Germany** Domestic in **USA**

Was This Author's Contribution to the Work Anonymous? ☐ Yes ☒ No If the answer to either of these questions is "Yes" see detailed instructions.

Was This Author's Contribution to the Work Pseudonymous? ☐ Yes ☒ No

Nature of Authorship Check appropriate box(es) See instructions
☐ 3-Dimensional sculpture ☐ Map ☐ Technical drawing
☒ 2-Dimensional artwork ☐ Photograph ☐ Text
☐ Reproduction of work of art ☐ Jewelry design ☐ Architectural work

Name of Author **b** Dates of Birth and Death
Year Born Year Died

Was this contribution to the work a "work made for hire"? ☐ Yes ☒ No

Author's Nationality or Domestic Name of Country **OR** Claim of Unpublished in

Was This Author's Contribution to the Work Anonymous? ☐ Yes ☒ No If the answer to either of these questions is "Yes" see detailed instructions.

Was This Author's Contribution to the Work Pseudonymous? ☐ Yes ☒ No

Nature of Authorship Check appropriate box(es) See instructions
☐ 3-Dimensional sculpture ☐ Map ☐ Technical drawing
☐ 2-Dimensional artwork ☐ Photograph ☐ Text
☐ Reproduction of work of art ☐ Jewelry design ☐ Architectural work

3 a Year in Which Creation of This Work Was Completed **2003** b Date and Nation of First Publication of This Particular Work
Complete this information ONLY if this work has been published Month **April** Day **4** Year **2003** Nation **USA**

4 COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2 **NINA BEROTT**
228 EAST 6TH ST #3
NY, NY 10003

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) claimed ownership of the copyright.

APPROPRIATE STAMPS
MAY 19 2004
ONE DEPOSIT RECEIVED
TWO DEPOSITS RECEIVED
MAY 19 2004
FUNDS RECEIVED

MORE ON BACK • Complete all applicable space numbers (a-e) on the reverse side of this page
• See detailed instructions. • Sign the form at line 6

DO NOT WRITE HERE
Page 1 of 2 pages

EXAMINED BY MMK FORM VA
 CHECKED BY _____
☐ CORRESPONDENCE
 Yes _____
 FOR COPYRIGHT OFFICE USE ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?
☐ Yes ☒ No If your answer is "Yes," why is another registration being sought? (Check appropriate box.)
 a. ☐ This is the first published edition of a work previously registered in unpublished form.
 b. ☐ This is the first application submitted by this author in copyright claims.
 c. ☐ This is a changed version of the work, as shown by space 6 on this application.
 If your answer is "Yes," give: Previous Registration Number: _____ Year of Registration: _____

5

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.
 a. Framing material. Identify any preexisting work or works that this work is based on or incorporates: _____
 b. Material Added to This Work. Give a brief, general statement of the material that has been added to this work and in which copyright is claimed: _____

6

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.
 Name: _____ Account Number: _____

7

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt./City/State/ZIP _____

NINA BEROTT
 228 East 6th St. #3
 NY, NY 10003

Area code and daytime telephone number: (212) 529 8766 Fax number: (212) 228 8446
 Email: nundmail@thermudtruck.com

CERTIFICATION I, the undersigned, hereby certify that I am the

check only one: ☒ author
☐ other copyright claimant
☐ owner of exclusive right(s)
☐ authorized agent of _____
 Name of author or other copyright claimant, or owner of exclusive right(s): NINA BEROTT

8

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.
 Typed as printed name and date: If this application gives a date of publication in space 3, do not sign and submit it before that date.
NINA BEROTT Date: 5/13/04

Handwritten signature (X) Nina Berott

Certificate will be mailed in window envelope to this address.

Name: NINA BEROTT
 Number/Street: 228 East 6th St. #3
 City/State/ZIP: NY, NY 10003

- Complete all necessary forms
- Sign your application in space 6
- 1 Application fee
- 2 Nonreturnable filing fee in check or money order payable to Registrar of Copyright
- 3 Copying fee
- Library of Congress Copyright Office
- 101 Independence Avenue, S.E.
- Washington, D.C. 20540-0000

9

WARNING Any person who knowingly makes a false representation of a material fact in this application for copyright registration provided for by section 101 of the Copyright Act of 1976, shall be liable for civil and criminal penalties.

Form Copyright Office, U.S. Copyright Office, 101 Independence Avenue, S.E., Washington, D.C. 20540-0000

U.S. Government Printing Office: 2004-504-000/001-000



EXHIBIT C

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 3,395,872

United States Patent and Trademark Office

Registered Mar. 11, 2008

**TRADEMARK
PRINCIPAL REGISTER**



MARINI, MATTHEW, A. (UNITED STATES IN-
DIVIDUAL)
800 N. REMBRANDT AVE.
ROYAL OAK, MI 48067

FIRST USE 9-24-2007; IN COMMERCE 9-24-2007.

SN 78-604,264, FILED 4-7-2005.

FOR: READY TO DRINK COFFEE BEVERAGES,
IN CLASS 30 (U.S. CL. 46).

KATHY DE JONGE, EXAMINING ATTORNEY

EXHIBIT D

Trademark/Service Mark Application, Principal Register

Serial Number: 77395121

Filing Date: 02/12/2008

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77395121
MARK INFORMATION	
*MARK	\\TICRS2\EXPORT15\773\951\77395121\xml1\APP0002.JPG
SPECIAL FORM	YES
USPTO-GENERATED IMAGE	NO
COLOR MARK	NO
*DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of a stylized word spelling "muud" inside and through a stylized splatter pattern.
PIXEL COUNT ACCEPTABLE	NO
PIXEL COUNT	170 x 190
APPLICANT INFORMATION	
*OWNER OF MARK	Underground Beverage Brands
*STREET	800 N. Rembrandt Ave.
*CITY	Royal Oak
*STATE (Required for U.S. applicants)	Michigan
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	48067
PHONE	248 336.9383
FAX	248 336.9384
EMAIL ADDRESS	jonessoda@ameritech.net
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
LEGAL ENTITY INFORMATION	
TYPE	LIMITED LIABILITY COMPANY
STATE/COUNTRY WHERE LEGALLY ORGANIZED	Delaware
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	030
*DESCRIPTION	Beverages made of coffee; Coffee; Coffee; Coffee based beverages; Coffee beans; Coffee beverages with milk; Coffee-based beverage containing milk; Coffee-based beverages; Ground coffee beans; Prepared coffee and coffee-based beverages; Roasted coffee beans
FILING BASIS	SECTION 1(b)
INTERNATIONAL CLASS	033
*DESCRIPTION	Coffee-based liqueurs
FILING BASIS	SECTION 1(b)
INTERNATIONAL CLASS	043

*DESCRIPTION	Coffee shops, coffee house and snack-bar surfaces
FILING BASIS	SECTION 1(b)
INTERNATIONAL CLASS	025
*DESCRIPTION	Hoods; Jerseys; Tops
FILING BASIS	SECTION 1(b)
CORRESPONDENCE INFORMATION	
NAME	Underground Beverage Brands
FIRM NAME	Underground Beverage Brands
STREET	800 N. Rembrandt Ave.
CITY	Royal Oak
STATE	Michigan
COUNTRY	United States
ZIP/POSTAL CODE	48067
PHONE	248 336.9383
FAX	248 336.9384
EMAIL ADDRESS	jonessoda@ameritech.net
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	4
FEE PER CLASS	325
*TOTAL FEE DUE	1300
*TOTAL FEE PAID	1300
SIGNATURE INFORMATION	
SIGNATURE	/mattmarini/
SIGNATORY'S NAME	Matt Marini
SIGNATORY'S POSITION	owner
DATE SIGNED	02/12/2008

PTO Form 1-776 (Rev. 9/22/96)
OMB No. 0651-0009 (Exp. 09-30-2008)

Trademark/Service Mark Application, Principal Register

Serial Number: 77395121

Filing Date: 02/12/2008

To the Commissioner for Trademarks:

MARK: (Stylized and/or Design, see mark)

The applicant is not claiming color as a feature of the mark. The mark consists of a stylized word spelling "muud" inside and through a stylized splatter pattern.

The applicant, Underground Beverage Brands, a limited liability company legally organized under the laws of Delaware, having an address of 800 N. Rembrandt Ave., Royal Oak, Michigan, United States, 48067, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 030: Beverages made of coffee; Coffee; Coffee; Coffee based beverages; Coffee beans; Coffee beverages with milk; Coffee-based beverage containing milk; Coffee-based beverages; Ground coffee beans; Prepared coffee and coffee-based beverages; Roasted

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 033: Coffee-based liqueurs

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 043: Coffee shops; Coffee-house and snack-bar services

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 025: Hoods; Jerseys; Tops

If the applicant is filing under Section 1(b), intent to use, the applicant declares that it has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(b), as amended.

If the applicant is filing under Section 1(a), actual use in commerce, the applicant declares that it is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

If the applicant is filing under Section 44(d), priority based on foreign application, the applicant declares that it has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and asserts a claim of priority based on a specified foreign application(s). 15 U.S.C. Section 1126(d), as amended.

If the applicant is filing under Section 44(e), foreign registration, the applicant declares that it has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and submits a copy of the supporting foreign registration(s), and translation thereof, if appropriate. 15 U. S.C. Section 1126(e), as amended.

Correspondence Information: Underground Beverage Brands

800 N. Rembrandt Ave.
Royal Oak, Michigan 48067
248 336.9383(phone)
248 336.9384(fax)
jonessoda@ameritech.net (authorized)

A fee payment in the amount of \$1300 has been submitted with the application, representing payment for 4 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /mattmarini/ Date Signed: 02/12/2008

Signatory's Name: Matt Marini

Signatory's Position: owner

RAM Sale Number: 2216

RAM Accounting Date: 02/13/2008

Serial Number: 77395121

Internet Transmission Date: Tue Feb 12 17:18:38 EST 2008

TEAS Stamp: USPTO/BAS-67.38.21.56-200802121718385160

72-77395121-4003d2411d66e4c742d2340b3d6c

5a1afce-CC-2216-20080212162025957100



EXHIBIT E

**COFFEE REST OF
FOR THE REST OF US**

CALL TOLL FREE
800.265.8053

INFO@MUUDCOFFEE.COM

NEW 15 OZ
CANS
AVAILABLE
NOW!!



15 FL OZ (444 mL)

**COFFEE RESTOS
FOR THE REST OF US**

EXHIBIT F

Main Identity

From: "Sean Pierce" <sean.pierce@drinkmud.com>
To: <mudmail@themudtruck.com>
Sent: Wednesday, December 19, 2007 6:58 PM
Subject: RE: Trademark Infringement MUD Coffee

Ok,

I will change the name and we are good?

You win!!

From: mudmail@themudtruck.com [mailto:mudmail@themudtruck.com]
Sent: Wednesday, December 19, 2007 2:51 PM
To: Sean Pierce
Subject: Re: Trademark Infringement MUD Coffee

dear sean,
pls see the attached artwork that was part of the fax i now tried to fax to you five times with interruptions after two pages from your machine.
and, with all due respect, i do not NEED to respond to you at all. i am doing you a favor.
best,
nina berott

ps: i personally handdrew this logo in 2002.

MUD Family Inc.
307 East 9th Street # GRN
New York, NY 10003
212.529.8766

www.MUDNYC.com

This email message, together with any attachments, is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged and confidential.

A dream you dream alone is only a dream. A dream you dream together is reality.

-----Original Message-----

From: Sean Pierce [mailto:sean.pierce@drinkmud.com]
Sent: Wednesday, December 19, 2007 05:34 PM
To: mudmail@themudtruck.com
Subject: RE: Trademark Infringement MUD Coffee

I understand you have copyrights to the words MUD SPOTS but where is the design?

WHERE IS THE ARTWORK?

I need logo proof or we will proceed with matters on our end that you copied our splatter pattern

From: mudmail@themudtruck.com [mailto:mudmail@themudtruck.com]

8/12/2008

Sent: Wednesday, December 19, 2007 2:24 PM
To: Sean Pierce
Subject: Re: Trademark Infringement MUD Coffee

dear sean,
your fax machine is interrupting the transmission for the third time now. do you have an alternative fax number that works?
thank you.
nina berott

MUD Family Inc.
307 East 9th Street # GRN
New York, NY 10003
212.529.8766

www.MUDNYC.com

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-----Original Message-----

From: Sean Pierce [mailto:sean.pierce@drinkmud.com]
Sent: Wednesday, December 19, 2007 05:21 PM
To: mudmail@themudtruck.com
Subject: RE: Trademark Infringement MUD Coffee

This is what I got? Do you have the artwork?

Mud.

Type of Work: Visual Material

Registration Number / Date: VA0001260747 / 2004-05-19

Application Title: Mud spot logo.

Title: Mud.

Description: Drawing.

Copyright Claimant: Nina Berott, 1974-

Date of Creation: 2003

Date of Publication: 2003-04-04

Names: Berott, Nina, 1974-

From: mudmail@themudtruck.com [mailto:mudmail@themudtruck.com]

8/12/2008

Sent: Wednesday, December 19, 2007 2:08 PM
To: Sean Pierce
Subject: Re: Trademark Infringement MUD Coffee

dear sean,
pls be so kind and send me your fax number. i will fax you a copy of the legal document.
thank you,
nina berott

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-----Original Message-----

From: Sean Pierce [mailto:sean.pierce@drinkmud.com]
Sent: Wednesday, December 19, 2007 04:56 PM
To: mudmail@themudtruck.com, matt.marini@drinkmud.com
Cc: ericvaughnflam@aol.com
Subject: RE: Trademark Infringement MUD Coffee

Show me the MUDSPOT registration prior to ours and it is you!!

From: mudmail@themudtruck.com [mailto:mudmail@themudtruck.com]
Sent: Wednesday, December 19, 2007 1:39 PM
To: Sean Pierce; mudmail@themudtruck.com; matt.marini@drinkmud.com
Cc: ericvaughnflam@aol.com
Subject: Re: Trademark Infringement MUD Coffee

dear sean,

with all due respect, but greg has not been aware of your registration until a week ago.

the effective date of the registration of our mudspot logo was may 19th, 2004 with the United States Copyright Offices (VA 1-260-747) and the use of that logo in commerce is in effect since our mud coffee store opening called MudSpot on Sept. 14th, 2003.

pls take care.

thanks.

nina berott

MUD Family Inc.
307 East 9th Street # GRN
New York, NY 10003
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-----Original Message-----

From: Sean Pierce [mailto:sean.pierce@drinkmud.com]
Sent: Wednesday, December 19, 2007 04:23 PM
To: mudmail@themudtruck.com, matt.marini@drinkmud.com
Cc: ericvaughnflam@aol.com
Subject: RE: Trademark Infringement MUD Coffee

Greg,

Do you have the MUDSPOT logo registration number?

I think the name issue is not a problem on my end, but from what I can find out the MUDSPOT logo is not registered and yesterday you told me you have been aware of our mark for a few years now and you decided not to do anything

until now. So this leads us to believe that you altered your logo after our was registered so please clarify this with a registration number for MUDSPOT LOGO

please send me the registration number for that logo and if it is registered then I can make needed changes if that is necessary.

The 2 logos that are registered and not similar in design. Only the letters are like!

Thanks

Sean

From: mudmail@themudtruck.com [mailto:mudmail@themudtruck.com]
Sent: Wednesday, December 19, 2007 12:36 PM
To: matt.marini@drinkmud.com; sean.pierce@drinkmud.com; sean@drinkmud.com; mikemcshane@drinkmud.com
Cc: ericvaughnflam@aol.com
Subject: Trademark Infringement MUD Coffee

Via certified mail and email

Mr. Matt Marini (matt.marini@drinkmud.com)
Mr. Sean Pierce (sean.pierce@drinkmud.com)
Mr. Mike McShane (mikemcshane@drinkmud.com)

8/12/2008

Underground Beverage Brands Llc
800 N. Rembrandt Ave
Royal Oak, MI 48067

15830 El Prado Rd
Suite D
Chino, CA 91708

New York, December 19, 2007

Re: Trademark Infringement \$B!H (BMUD \$B!I (B Coffee

Dear Gentlemen,

After the surprising moment of a good friend sending us the link to the beverage marketing website displaying your product (link: http://www.bevnet.com/reviews/mud_coffee/) and congratulating us to our new Mud Coffee product, we must say, we are not very fond of this situation.

\$B-t (B Not only does your coffee product carry our name \$B!H (BMUD \$B!I (B, which we are marketing since 2000 for all our coffee products.

\$B-t (B Your company is called the same as ours (\$B!H (BMud Coffee Co. \$B!I (B).

\$B-t (B Your logo design resembles our Mud logo and MudSpot logo design in appearance to close for comfort. Please acknowledge that both were registered as our Trademark and/or Copyright in 2004 and used in commerce since 2001.

\$B-t (B On your website www.drinkmud.com you are referring to terms like \$B!H (BMud Music \$B!I (B and \$B!H (BMud Shop \$B!I (B, terms we have been using since 2000 on our website (www.mudcoffee.com and www.mud-coffee.com).

All the above seems unlikely to be an accidental coincidence.

We would like to point out to you, that as professional and proud business owners, we expect you to act as described below (to be most specific):

\$B-t (B Change the name of your product.

\$B-t (B Change the logo design of your product.

\$B-t (B Abandon your registered mark \$B!H (BMUD \$B!I (B with the USPTO.

\$B-t (B Remove your website (www.drinkmud.com) from the WorldWideWeb as well as all affiliated websites referring to your product (i.e. www.myspace.com/drinkmud as well as http://www.bevnet.com/reviews/mud_coffee/) and any other internet presence that relates to your product.

Should you comply and show us evidence of such actions, we will be satisfied and simply wish you good luck with your own creation of a successful coffee beverage product.

Please respond to us within the timeframe given by the letter from our attorney to you sent on December 14th, 2007.

Thank You.

With best regards,

Nina Berott & Greg Northrop
Owners - MUD Coffee

MUD Family Inc.
307 East 9th Street # GRN
New York, NY 10003
212.529.8766

www.MUDNYC.com

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8/12/2008

Main Identity

From: "Sean Pierce" <sean.pierce@drinkmud.com>
To: <mudmail@themudtruck.com>
Sent: Wednesday, December 19, 2007 6:49 PM
Subject: RE: Trademark Infringement MUD Coffee

Your have copyrights to the word Mud.

From: mudmail@themudtruck.com [mailto:mudmail@themudtruck.com]
Sent: Wednesday, December 19, 2007 2:24 PM
To: Sean Pierce
Subject: Re: Trademark Infringement MUD Coffee

dear sean,
your fax machine is interrupting the transmission for the third time now. do you have an alternative fax number that works?
thank you.
nina berott

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-----Original Message-----

From: Sean Pierce [mailto:sean.pierce@drinkmud.com]
Sent: Wednesday, December 19, 2007 05:21 PM
To: mudmail@themudtruck.com
Subject: RE: Trademark Infringement MUD Coffee

This is what I got? Do you have the artwork?

Mud.

Type of Work: Visual Material

Registration Number / Date: VA0001260747 / 2004-05-19

Application Title: Mud spot logo.

Title: Mud.

Description: Drawing.

Copyright Claimant: Nina Berott, 1974-

Date of Creation: 2003

Date of Publication: 2003-04-04

Names: Berott, Nina, 1974-

From: mudmail@themudtruck.com [mailto:mudmail@themudtruck.com]

Sent: Wednesday, December 19, 2007 2:08 PM

To: Sean Pierce

Subject: Re: Trademark Infringement MUD Coffee

dear sean,
pls be so kind and send me your fax number. i will fax you a copy of the legal document.
thank you,
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-----Original Message-----

From: Sean Pierce [mailto:sean.pierce@drinkmud.com]

Sent: Wednesday, December 19, 2007 04:56 PM

To: mudmail@themudtruck.com, matt.marini@drinkmud.com

Cc: ericvaughnflam@aol.com

Subject: RE: Trademark Infringement MUD Coffee

Show me the MUDSPOT registration prior to ours and it is you!!

From: mudmail@themudtruck.com [mailto:mudmail@themudtruck.com]

Sent: Wednesday, December 19, 2007 1:39 PM

To: Sean Pierce; mudmail@themudtruck.com; matt.marini@drinkmud.com

Cc: ericvaughnflam@aol.com

Subject: Re: Trademark Infringement MUD Coffee

dear sean,

with all due respect, but greg has not been aware of your registration until a week ago.

8/12/2008

the effective date of the registration of our mudspot logo was may 19th, 2004 with the United States Copyright Offices (VA 1-260-747) and the use of that logo in commerce is in effect since our mud coffee store opening called MudSpot on Sept. 14th, 2003.

pls take care.

thanks.

nina berott

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To: mudmail@themudtruck.com, matt.marini@drinkmud.com
Cc: ericvaughnflam@aol.com
Subject: RE: Trademark Infringement MUD Coffee

Greg,

Do you have the MUDSPOT logo registration number?

I think the name issue is not a problem on my end, but from what I can find out the MUDSPOT logo is not registered and yesterday you told me you have been aware of our mark for a few years now and you decided not to do anything

until now. So this leads us to believe that you altered your logo after our was registered so please clarify this with a registration number for MUDSPOT LOGO

please send me the registration number for that logo and if it is registered then I can make needed changes if that is necessary.

The 2 logos that are registered and not similar in design. Only the letters are like!

Thanks

Sean

From: mudmail@themudtruck.com [mailto:mudmail@themudtruck.com]
Sent: Wednesday, December 19, 2007 12:36 PM
To: matt.marini@drinkmud.com; sean.pierce@drinkmud.com; sean@drinkmud.com; mikemcshane@drinkmud.com

8/12/2008

Cc: ericvaughnflam@aol.com

Subject: Trademark Infringement MUD Coffee

Via certified mail and email

Mr. Matt Marini (matt.marini@drinkmud.com)

Mr. Sean Pierce (sean.pierce@drinkmud.com)

Mr. Mike McShane (mikemcshane@drinkmud.com)

Underground Beverage Brands Llc

800 N. Rembrandt Ave

Royal Oak, MI 48067

15830 El Prado Rd

Suite D

Chino, CA 91708

New York, December 19, 2007

Re: Trademark Infringement \$B!H (BMUD \$B!I (B Coffee

Dear Gentlemen,

After the surprising moment of a good friend sending us the link to the beverage marketing website displaying your product (link: http://www.bevnet.com/reviews/mud_coffee/) and congratulating us to our new Mud Coffee product, we must say, we are not very fond of this situation.

\$B-t (B Not only does your coffee product carry our name \$B!H (BMUD \$B!I (B, which we are marketing since 2000 for all our coffee products.

\$B-t (B Your company is called the same as ours (\$B!H (BMud Coffee Co. \$B!I (B).

\$B-t (B Your logo design resembles our Mud logo and MudSpot logo design in appearance to close for comfort. Please acknowledge that both were registered as our Trademark and/or Copyright in 2004 and used in commerce since 2001.

\$B-t (B On your website www.drinkmud.com you are referring to terms like \$B!H (BMud Music \$B!I (B and \$B!H (BMud Shop \$B!I (B, terms we have been using since 2000 on our website (www.mudcoffee.com and www.mud-coffee.com).

All the above seems unlikely to be an accidental coincidence.

We would like to point out to you, that as professional and proud business owners, we expect you to act as described below (to be most specific):

\$B-t (B Change the name of your product.

\$B-t (B Change the logo design of your product.

\$B-t (B Abandon your registered mark \$B!H (BMUD \$B!I (B with the USPTO.

\$B-t (B Remove your website (www.drinkmud.com) from the WorldWideWeb as well as all affiliated websites referring to your product (i.e. www.myspace.com/drinkmud as well as http://www.bevnet.com/reviews/mud_coffee/) and any other internet presence that relates to your product.

Should you comply and show us evidence of such actions, we will be satisfied and simply wish you good luck with your own creation of a successful coffee beverage product.

Please respond to us within the timeframe given by the letter from our attorney to you sent on December 14th, 2007.

Thank You.

With best regards,

Nina Berott & Greg Northrop

Owners - MUD Coffee

8/12/2008

MUD Family Inc.
307 East 9th Street # GRN
New York, NY 10003
212.529.8766

www.MUDNYC.com

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Main Identity

From: "Sean Pierce" <sean.pierce@drinkmud.com>
To: <mudmail@themudtruck.com>
Sent: Wednesday, December 19, 2007 6:34 PM
Subject: RE: Trademark Infringement MUD Coffee

Your right!!! I will never use MUD SPOTS every again!!

From: mudmail@themudtruck.com [mailto:mudmail@themudtruck.com]
Sent: Wednesday, December 19, 2007 2:24 PM
To: Sean Pierce
Subject: Re: Trademark Infringement MUD Coffee

dear sean,
your fax machine is interrupting the transmission for the third time now. do you have an alternative fax number that works?
thank you.
nina berott

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-----Original Message-----

From: Sean Pierce [mailto:sean.pierce@drinkmud.com]
Sent: Wednesday, December 19, 2007 05:21 PM
To: mudmail@themudtruck.com
Subject: RE: Trademark Infringement MUD Coffee

This is what I got? Do you have the artwork?

Mud.

Type of Work: Visual Material

Registration Number / Date: VA0001260747 / 2004-05-19

Application Title: Mud spot logo.

Title: Mud.

8/12/2008

Description: Drawing.

Copyright Claimant: Nina Berott, 1974-

Date of Creation: 2003

Date of Publication: 2003-04-04

Names: Berott, Nina, 1974-

From: mudmail@themudtruck.com [mailto:mudmail@themudtruck.com]
Sent: Wednesday, December 19, 2007 2:08 PM
To: Sean Pierce
Subject: Re: Trademark Infringement MUD Coffee

dear sean,
pls be so kind and send me your fax number. i will fax you a copy of the legal document.
thank you,
nina berott

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-----Original Message-----

From: Sean Pierce [mailto:sean.pierce@drinkmud.com]
Sent: Wednesday, December 19, 2007 04:56 PM
To: mudmail@themudtruck.com, matt.marini@drinkmud.com
Cc: ericvaughnflam@aol.com
Subject: RE: Trademark Infringement MUD Coffee

Show me the MUDSPOT registration prior to ours and it is you!!

From: mudmail@themudtruck.com [mailto:mudmail@themudtruck.com]
Sent: Wednesday, December 19, 2007 1:39 PM
To: Sean Pierce; mudmail@themudtruck.com; matt.marini@drinkmud.com
Cc: ericvaughnflam@aol.com
Subject: Re: Trademark Infringement MUD Coffee

dear sean,

with all due respect, but greg has not been aware of your registration until a week ago.

8/12/2008

the effective date of the registration of our mudspot logo was may 19th, 2004 with the United States Copyright Offices (VA 1-260-747) and the use of that logo in commerce is in effect since our mud coffee store opening called MudSpot on Sept. 14th, 2003.

pls take care.

thanks.

nina berott

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To: mudmail@themudtruck.com, matt.marini@drinkmud.com
Cc: ericvaughnflam@aol.com
Subject: RE: Trademark Infringement MUD Coffee

Greg,

Do you have the MUDSPOT logo registration number?

I think the name issue is not a problem on my end, but from what I can find out the MUDSPOT logo is not registered and yesterday you told me you have been aware of our mark for a few years now and you decided not to do anything

until now. So this leads us to believe that you altered your logo after our was registered so please clarify this with a registration number for MUDSPOT LOGO

please send me the registration number for that logo and if it is registered then I can make needed changes if that is necessary.

The 2 logos that are registered and not similar in design. Only the letters are like!

Thanks

Sean

From: mudmail@themudtruck.com [mailto:mudmail@themudtruck.com]
Sent: Wednesday, December 19, 2007 12:36 PM

8/12/2008

To: matt.marini@drinkmud.com; sean.pierce@drinkmud.com; sean@drinkmud.com; mikemcshane@drinkmud.com

Cc: ericvaughnflam@aol.com

Subject: Trademark Infringement MUD Coffee

Via certified mail and email

Mr. Matt Marini (matt.marini@drinkmud.com)

Mr. Sean Pierce (sean.pierce@drinkmud.com)

Mr. Mike McShane (mikemcshane@drinkmud.com)

Underground Beverage Brands Llc
800 N. Rembrandt Ave
Royal Oak, MI 48067

15830 El Prado Rd
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Thank You.

With best regards,

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Main Identity

From: "Sean Pierce" <sean.pierce@drinkmud.com>
To: <mudmail@themudtruck.com>
Sent: Wednesday, December 19, 2007 6:58 PM
Subject: RE: Trademark Infringement MUD Coffee

Ok,

I will change the name and we are good?

You win!!

From: mudmail@themudtruck.com [mailto:mudmail@themudtruck.com]
Sent: Wednesday, December 19, 2007 2:51 PM
To: Sean Pierce
Subject: Re: Trademark Infringement MUD Coffee

dear sean,
pls see the attached artwork that was part of the fax i now tried to fax to you five times with interruptions after two pages from your machine.
and, with all due respect, i do not NEED to respond to you at all. i am doing you a favor.
best,
nina berott

ps: i personally handdrew this logo in 2002.

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Sent: Wednesday, December 19, 2007 05:34 PM
To: mudmail@themudtruck.com
Subject: RE: Trademark Infringement MUD Coffee

I understand you have copyrights to the words MUD SPOTS but where is the design?

WHERE IS THE ARTWORK?

I need logo proof or we will proceed with matters on our end that you copied our splatter pattern

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Via certified mail and email

Mr. Matt Marini (matt.marini@drinkmud.com)
Mr. Sean Pierce (sean.pierce@drinkmud.com)
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